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| APPLICATION NO. | FI | LING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------|-------------------|------------|----------------------|-------------------------|------------------|
| 10/766,434 | 66,434 01/26/2004 | | Donald E. Black | 4012 | 3611 |
| 29356 | 7590 | 05/01/2006 | | EXAMINER | |
| JERRY SE | | | CHAMBERS, MICHAEL S | | |
| 617 CROGE FREMONT, | | 20 | ART UNIT | PAPER NUMBER | |
| | , | | | 3711 | |
| | | | | DATE MAILED: 05/01/2006 | ς. |

Please find below and/or attached an Office communication concerning this application or proceeding.

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| | Application No. | Applicant(s) | |
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| | 10/766,434 | BLACK, DONALD E. | |
| Office Action Summary | Examiner | Art Unit | |
| | Mike Chambers | 3711 | |
| The MAILING DATE of this communication app Period for Reply | ears on the cover sheet with the c | orrespondence address | |
| A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b). | ATE OF THIS COMMUNICATION 6(a). In no event, however, may a reply be time rill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONEI | I. lely filed the mailing date of this communication. D (35 U.S.C. § 133). | |
| Status | | | |
| Responsive to communication(s) filed on 14 Ma This action is FINAL. Since this application is in condition for allowar closed in accordance with the practice under E | action is non-final. ace except for formal matters, pro | | |
| Disposition of Claims | | | |
| 4) ☐ Claim(s) 1,3,6-11,13 and 16-20 is/are pending 4a) Of the above claim(s) is/are withdraw 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) 1,3,6-11,13 and 16-20 is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or | vn from consideration. | | |
| Application Papers | | | |
| 9) The specification is objected to by the Examiner 10) The drawing(s) filed on is/are: a) access applicant may not request that any objection to the Replacement drawing sheet(s) including the correction of the oath or declaration is objected to by the Examiner 11) The oath or declaration is objected to by the Examiner 12. **The Declaration** 13. **The Declaration** 14. **The Declaration** 15. **The Declaration** 16. **The Declaration** 17. **The Declaration** 18. **The Declaration** 19. **The Declaration** 19. **The Declaration** 19. **The Declaration** 19. **The Declaration** 11. **The Declaration** 12. **The Declaration** 13. **The Declaration** 14. **The Declaration** 15. **The Declaration** 16. **The Declaration** 17. **The Declaration** 18. **The Declaration** 19. **The Declar | epted or b) objected to by the Edrawing(s) be held in abeyance. See on is required if the drawing(s) is obj | e 37 CFR 1.85(a). sected to. See 37 CFR 1.121(d). | |
| Priority under 35 U.S.C. § 119 | | | |
| 12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority documents 2. Certified copies of the priority documents 3. Copies of the certified copies of the prior application from the International Bureau * See the attached detailed Office action for a list of the priorical strength | s have been received. s have been received in Application ity documents have been received (PCT Rule 17.2(a)). | on No ed in this National Stage | |
| Attachment(s) | _ | | |
| Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date | 4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other: | | |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, line 16 recites the limitation "the tubular lighter" in line 1. It appears the term "member" is missing from the claim.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is dependent on itself. It will be assumed the claim depends from claim 11.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,3,6-7,11,13, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franssen (6918843) in view of Adorjan (829749). Franssen discloses the elements of claim 1, (abstract, fig 1,2) however it fails to disclose means for

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compressing the weights. Adorjan discloses a means for compressing variable weights in a tubular shaft (fig 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the means for compressing weights in a tubular shaft of Adorjan with the apparatus of Franssen in order to prevent multiple

As to claim 3: Franssen discloses a bore of consistent diameter (fig 2).

As to claim 6: Franssen discloses a flanged and extended portion (fig 2).

As to claim 7: Franssen discloses a threaded portion (fig 2).

As to claim 11: Franssen discloses an outer cap (fig 2).

weights from making a noise and distracting the batter.

As to claim 13: Franssen discloses a bore of consistent diameter (fig 2).

As to claim 16: Franssen discloses a flanged and extended portion (fig 2).

As to claim 17: Franssen discloses a threaded portion (fig 2).

Claims 9,10,19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franssen (6918843) in view of Ador (829749) as applied above and further in view of Official Notice. Official Notice is taken that the use of plastic and aluminum is well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to select any one of several equivalent materials including aluminum and plastic based on cost and design considerations.

Also,

Claims 1,3,6-7,11,13, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owen (3116926) in view of Franssen (6918843). Owen discloses the

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elements of claim 1, however it fails to disclose an outer diameter less than the diameter of a conventional bat (fig 2, 2:51-54). Franssen discloses an outer diameter less than the diameter of a conventional bat (fig 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the bat diameter of Franssen with the apparatus of Owen in order to permit the training bat to be used by a greater population due to size and weight considerations.

As to claim 3: Franssen discloses a bore of consistent diameter (fig 2).

As to claim 6: Franssen discloses a flanged and extended portion (fig 2).

As to claim 7: Franssen discloses a threaded portion (fig 2).

As to claim 11: Franssen discloses an outer cap (fig 2).

As to claim 13: Franssen discloses a bore of consistent diameter (fig 2).

As to claim 16: Franssen discloses a flanged and extended portion (fig 2).

As to claim 17: Franssen discloses a threaded portion (fig 2).

As to claim 18: Owen discloses a compression spring (fig 2). The position of the spring is not critical to the apparatus. The spring could be interchanged with the weights without affecting the operation of the device.

Claims 9,10,19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owen (3116926) in view of Franssen (6918843) as applied above and further in view of Official Notice. Official Notice is taken that the use of plastic and aluminum is well known in the art. It would have been obvious to one of ordinary skill in

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the art at the time of the invention to select any one of several equivalent materials

including aluminum and plastic based on cost and design considerations.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are

moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Mike Chambers whose telephone number is 571-272-

4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

829749*3116926*6918843*514420*5634856*357

8801*0558320

Michael Chambers Examiner

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April 27, 2006

EUGENE KIM SUPERVISORY PATENT EXAMINER

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